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MARCH MEETING.

A stated monthly meeting of the Society was held this day, Thursday, 14th March, at noon; the President, Hon. ROBERT C. WINTHROP, in the chair.

In the absence of the Librarian, the Recording Secretary announced donations from the American Philosophical Society; L'Institut Historique, Paris; the Ulster Historical Society; Z. Allen, Esq.; Rev. Cyrus A. Bartol; Rev. Caleb D. Bradlee; C. Allen Browne and A. G. Browne, jun., Esqs.; Count Adolphe de Circourt; Lieutenant-Colonel J. D. Graham, U.S.A.; Hon. Hugh B. Grigsby; Rev. Edward C. Guild; Rev. Henry Herick; Miss Mary L. Hillhouse; J. C. G. Kennedy, Esq.; Rev. Abner Morse; J. W. Osborn, Esq.; W. Noël Sainsbury, Esq.; Benjamin S. Shaw, M.D.; Thomas H. Wynne, Esq.; and from Messrs. Bartlet, Bowditch, Forbes, Green, Hale (E. E.), Lamson, Parsons, Robbins (C.), Sibley, Webb, Whitney, and Winthrop, of the Society.

The Corresponding Secretary read letters of acceptance from Rev. A. P. Peabody, D.D.; Hon. Hugh B. Grigsby of Norfolk, Va.; Hon. J. L. Petigru of Charleston, S.C.; and Wm. Cullen Bryant, Esq., of New York.

A small polished block of the "Charter Oak" was presented to the Society's cabinet, on behalf of Miss A. S. Alden of Hartford, Conn.

A communication was received from Oren H. Peck, Esq., offering to the Society a few relics dug up by him on Captain's Hill, — the site of the dwelling-house of Captain Miles Standish.

Voted, That the President be requested to acknowledge the gift of these memorials of the past.

The President, in view of the annual meeting, appointed the following committees: viz., on examining the Treasurer's accounts, Messrs. J. C. Gray, Warren, and Clifford; on nomination of officers, Messrs. Deane, Saltonstall, and Whitney.

Mr. PAIGE communicated the following paper:—

Harvard Dinners.

In his private account-book, and on loose slips of paper, a former steward of Harvard College entered memoranda of certain dinners, specifying the articles provided, and their several prices. As illustrations of ancient customs, perhaps a selection from these memoranda may not be entirely without interest. The earliest in date describes "the commencement-dinner in the year 1703;" for which provision was made as follows:—

	£	s.	d.		£	s.	d.
4 barrels beer	2	8	0	Hens and chickens	2	7	0
1 barrel cider	0	16	6	Beef	5	9	6
18 gallons wine	2	18	7	Lamb	2	6	8
1 bushel salt, &c. . . .	0	4	0	Bacon	0	2	6
Carrots and turnips . . .	0	4	6	8 geese, 4 tongues	1	2	8
Cherries	0	7	2	Butter	1	17	6
Spices	0	10	6	Paper and skewers	0	6	6
Sugar	0	12	0	To Mr. Manning	0	4	0
Rosewater	0	3	6	Hire of dishes	0	9	0
Milk	0	2	0	Candles	0	2	3
Oranges and sauce	0	7	0	Washing	0	10	0
Apples	0	2	6				
Flour and wheat	3	1	0	First cost	£26	14	10

The meats at this dinner were substantial, and of sufficient variety; but of vegetables, only carrots and turnips are mentioned, and apparently a very small quantity of each. The

"candles" indicate that the convivialities extended into the evening; but this need occasion no surprise, when the generous allowance of wine, beer, and cider, is observed.

The next in date is a more particular account of "the dinner at the installing the President, 14th January, 1707:"—

	£	s.	d.		£	s.	d.
24 pounds flour	0	8	0	White sugar	0	0	6
14 pounds butter, and 10½	0	13	9	Beer	0	5	8
12 fowls	0	7	10	10 gallons green wine . .	1	7	6
29½ pounds beef, 36 pounds				4 gallons Madeira . . .	0	18	0
pork, 75 pounds roast				2 gallons Port wine . .	0	14	0
beef	2	0	10	6 glasses	0	5	6
4 turkeys, 36½d.	0	12	2	2 pounds sugar	0	1	10
6 pounds mutton	0	1	6	Spice	0	0	8
Two tongues	0	4	0	2 pounds tobacco . . .	0	2	0
7 pounds bread	0	3	6	4 dozen pipes	0	2	8
Onions	0	0	6	4½ pounds cheese . . .	0	4	6
Cranberries	0	0	8	10 mess-meat pies . . .	0	7	6
6 cabbages	0	2	0	9 mess-apple pies . . .	0	6	9
Turnips	0	1	6	Wood	0	5	0
Parsnips	0	1	0	Porterage	0	5	0
Potatoes	0	0	8				
Eggs	0	1	6				
					£10	6	6

The same variety of meats appears as before. Of the poultry, turkeys are substituted for geese; of vegetables, carrots are omitted, in place of which are onions, cabbages, and parsnips. Besides these are potatoes, which probably now, for the first time, were seen at a public college-dinner in America. The quantity used—probably no more than two pounds in weight—indicates their extreme rarity. I doubted, at first, whether I read the word aright: but, on further examination, I found that Mr. Bordman (the steward) bought of Mrs. Stevens, 30th March, 1699, "three-fourths pound potatoes" for £1. 1s.; and that he sold to Christopher Christophers, 8th May, 1699, "one pound potatoes" for fourpence. Whether this vegetable was raised here, or imported, I know not. Another special luxury provided for

this occasion, the "pipes" and "tobacco," I do not find included in the "bill of fare" at any other dinner. If the quantity of wine, beer, and cider, at the commencement-dinner, seemed large, it dwindles into insignificance when compared with the bountiful supply now furnished in honor of President Leverett. At the commencement, the cost of these articles constituted somewhat less than one-quarter part of the whole expense; at the installation, more than one-half. An account of this installation, and the names of some of the reverend and honorable guests at the dinner, may be found in Peirce's "History," pp. 80, 81. A more particular account by Judge Sewall, one of the eldest and gravest overseers, is contained in the Appendix to Quincy's "History," vol. i. p. 493. After describing the ceremonies of the installation, the Judge says, "Had a very good dinner upon three or four tables;" and, he impressively adds, "Got home very well. *Laus Deo.*"

Passing over an interval of thirty years, we come to "28th September, 1737. Dinner at the instalment of President Holyoke:—

	£	s.	d.
24 loaves bread, 10s.; eggs, 13s.	1	3	0
10 quarts milk, 4s. 2d.; 7 pounds sugar, 10s. 6d.	0	14	8
2½ ounces spice, 10s.; 7 pounds flour, 4s. 1d.	0	14	1
7 pounds raisins, 9s. 4d.; 6 pounds currants, 9s.; 15 pounds suet, 15s.	1	13	4
Butter for the pans	0	1	0
23 pounds pork, 34s. 6d.; neats' tongues, 30s.	3	4	6
28 fowls, boiled and roast	3	10	0
200 pounds boiled and roast beef, at 8d.	6	13	4
7½ pounds roast pork	0	7	6
22 pounds butter, 55s.; cabbages, carrots, and turnips, 12s.	3	7	0
Pepper, vinegar, and loaf-sugar, 4s.	0	4	0
3 turkeys, 18s.; onions and cranberry-sauce, 5s.	1	3	0
Dressing	7	11	9
8½ pounds cheese, 12s. 9d.; bread, 25s. 6d.	1	18	3
5 dozen plates of apple-pie and spice	3	0	0
10 gallons wine	6	0	0
Wood	0	2	6
	£41	7	11

In this dinner, a new feature appears. The bread, eggs, milk, sugar, spice, flour, raisins, currants, and suet seem to have entered into a form which required "butter for the pans;" but, whether puddings or cakes were the result, I am not sufficiently skilled in cooking to determine. Magnificent cakes were manufactured in those early days. Tutor Flynt was charged by the steward, in 1703, and again in 1704, for two cakes at commencement, twenty-seven shillings each. Possibly similar cakes may be here indicated.

Ten years later, three smaller dinners were provided in rapid succession, substantially alike, yet with circumstantial differences.

6th April, 1747. — Corporation Dinner.

	£	s.	d.
8 biscuit, 3s. 4d.; milk, 9d.; eggs, 5s.; nutmegs, 6s.; flour, 1s.; sugar, 3s. 6d.	0	19	7
9½ pounds roast and 8½ pounds boiled beef	1	15	6
8½ pounds roast veal, loin	0	17	0
6½ pounds salt pork	0	18	9
Calf's head and pluck	0	7	0
Bread and biscuit, 5s.; 2½ pounds cheese, 8s.	0	13	0
Carrots and potatoes	0	5	0
Pepper, 1s. 6d.; pickles, 1s. 6d.	0	3	0
7 pounds butter	1	11	6
Dressing	2	10	0
4 mess-buttered apple-pies	1	12	0
2 gallons wine, 14s.; beer, 1s.; wood, 4s.	0	19	0
	£12	11	4

22d April, 1747. — Dinner for Overseers' Committee.

	£	s.	d.
Biscuit, 20d.; milk, 7d.; eggs, 3s.; nutmegs, 6s.; flour, 4d.; su- gar, 1s. 9d.	0	13	4
9½ pounds salt beef, 19s. 6d.; salt pork, 6s.	1	5	6
7 pounds roast veal, 14s.; carrots, potatoes, vinegar, sugar, 4s.	0	18	0
Butter, 17s. 6d.; cheese, 4s.; bread, 2s.; biscuit, 2s. 6d.	1	6	0
Dressing	1	7	10
2 mess-buttered apple-pies	0	16	0
Wine, 14s.; beer, 1s.; wood, 5s.	1	0	0
	£7	6	8

12th May, 1747.—Dinner for the Overseers.

	£	s.	d.
15 pounds biscuit, 6s. 3d.; milk, 18d.; eggs, 7s. 6d.; nutmegs, 9s.; flour, 12d.; sugar, 4s. 3d.	1	9	6
23½ pounds boiled beef, 24½ pounds roast, 2s. 6d. per pound . . .	5	19	4
7½ pounds salt pork	1	10	0
6½ pounds roast veal, 6 pounds boiled veal	1	5	0
Carrots, potatoes, and herbs; pickles, 1s. 8d.; vinegar and pepper	0	15	0
8 pounds butter, 40s.; bread, 10s.; beer, 1s.	2	11	0
Dressing	6	17	7
3 apple-pies, 36s.; 2½ pounds cheese, 11s.	2	7	0
Wine, 28s.	1	8	0
	£24	2	5

In regard to these later dinners, it will be observed that the prices indicate a depreciated currency. The steward was allowed, by vote of the corporation, to charge a certain percentage on the first cost, for "dressing" the food. The last three dinners, like that of ten years' earlier date, are distinguished by the cakes or puddings. The "butter for the pans" is not separately mentioned, but is probably included in the general charge for "dressing." Although the three were generally similar, yet a difference may be mentioned. The corporation consumed comparatively less wine than the overseers, and less by about one-half than the overseers' committee; but they were amply compensated by the exclusive enjoyment of a "calf's head and pluck."

Mr. NORTON called attention to a book, recently published in England, entitled "Personal History of Lord Bacon," by Mr. Dixon, which he considered less deserving than is generally supposed. He sustained this opinion, and exemplified the character of the book, by showing the erroneous statements of the author with regard to American affairs.

Mr. WILLARD read a Report of the Committee to whom were referred the arguments of Sir Dudley

Rider and Sir John Strange, on the appeal of Phillips *vs.* Savage from Massachusetts to the King in Council in 1734 and 1738.

Mr. WILLARD stated that the report had been drawn up by his colleague on the Committee, Mr. Ames.

The Case of Phillips vs. Savage.

The Committee to whom was referred, at the last October meeting, the printed copy of the points and authorities of the counsel in the case of Phillips, appellant, *vs.* Savage and others, from the Governor and Council of the Massachusetts Bay to the King in Council, recently brought by the President of this Society from England, and by him presented to the Society, respectfully report.

Administration on the estate of Henry Phillips of Boston, who killed Benjamin Woodbridge in a duel on the Common, July 3, 1728, and who fled to France, and there died in about a year afterwards, was granted July 17, 1730, to his brother, Gillam Phillips. The real estate of Henry Phillips was appraised at three thousand nine hundred and fifty pounds, in the inventory which was returned into the Probate Office, Oct. 12, 1730. Henry Phillips was never married, and his father died before him. He died intestate, leaving his mother, one brother, two sisters (one the wife of Habijah Savage, and the other the wife of Arthur Savage), and the children of a deceased sister, Mrs. Butler.

On the sixth day of April, 1733, the Judge of Probate for the County of Suffolk issued his warrant to five freeholders, directing them "to make a just and equal division, or partition, of the estate, in housing and lands, whereof Henry Phillips, late of Boston, gentleman, deceased intestate, died seized and possessed, between his mother, brother, and sisters, or their legal representatives, in five equal parts, or shares." The committee so appointed performed the service as di-

rected by setting off one-fifth part of said real estate to Hannah Phillips, the mother of the said Henry Phillips; one-fifth part to Gillam Phillips, his brother; one-fifth each to Hannah Savage and Faith Savage, his sisters; and the other fifth of said real estate to the children of Mrs. Butler,—as appears by the return of the committee, dated May 11, 1733. The Judge of Probate allowed and confirmed the doings of said committee, in Probate Court, May 15, 1733.

On Thursday, Oct. 18, 1733, Gillam Phillips presented to the Governor and Council an appeal from the decree of the Judge of Probate of May 15, 1733, confirming the doings of the committee, which he insisted were wrong and erroneous; for that he, said Gillam Phillips, as the only brother of the deceased, was his heir, according to the common law of England. The appeal was read; and it was then ordered that a hearing be had of said appeal on Friday, the second day of November then next, at three o'clock, P.M.; and that the appellant seasonably serve the adverse party with a copy of the reasons of appeal, and of the said order of the Governor and Council thereon.

On the second day of November, 1733, a hearing was had before the Governor and Council (Belcher, Governor, in the chair); and the record of the Council says, that "the pleas, allegations, and evidences in the case being fully considered," it was "ordered and decreed, that the order of the Judge of Probate for the County of Suffolk for dividing the real estate of Henry Phillips, deceased, among his mother, brother, and sisters, &c., be and hereby is affirmed."

On the sixth day of November, 1733, Gillam Phillips presented his petition to the Governor and Council, praying to be admitted to appeal to the King in Council from the said decree of the Governor and Council; which petition was, on the same day, dismissed.

By an order of the King in Council, passed Feb. 12, 1734, Henry Phillips was allowed to appeal from the order of the

Judge of Probate of April 6, 1733, issuing the warrant to the committee of five freeholders to divide the real estate; and from the order of the Judge of Probate of May 15, 1733, allowing and confirming the return of the committee; and from the order of the Governor and Council of Nov. 2, 1733, affirming the decree of the Judge of Probate: and the cause was heard before the Lords of the Committee of his Majesty's most Honorable Privy Council on Friday and Monday, the thirteenth and sixteenth days of January, 1738, when the respective orders or decrees appealed from were affirmed, and the appeal dismissed.

The papers presented by the President, and referred to your Committee, prove themselves. The lesser document in length is the printed points, or heads of argument, of Sir Dudley Rider (afterwards Lord Chief-Justice of England, and the immediate predecessor of Lord Mansfield), then at the bar, and of his associate, who argued the case before what is now called the Judicial Committee of the King in Council, in behalf of Gillam Phillips. The longer document is the printed points of Sir John Strange, afterwards Master of the Rolls, then at the bar, and of his associate, who argued the case for the appellees.

When causes are argued upon printed points, or heads of argument, handed up to the judges, the rule is to pass a copy to the counsel of the adverse party. The copy before the Committee would seem to be those, or a copy of those, that were in the hands of Sir John Strange; for there are, in manuscript, upon the margin of the copy of the printed points of Sir Dudley Rider, strictures upon the argument, evidently drawn by one versed in the cause, and which were probably minutes by which to reply to the line of argument therein.

Who John Brown was, the associate counsel with Sir Dudley Rider, we have no means of knowing. Jonathan Belcher, the associate of Sir John Strange, was doubtless the son of the then Governor of the Province, and who graduated at Harvard College in 1728.

The Massachusetts act for the settlement and distribution of the estates of intestates, passed in the year 1692, and approved by the King in Council, pursuant to the second charter, provided, that, if the intestate left no wife nor children nor father, his estate, real and personal, should go "to the next of kin of the intestate in equal degree, and their legal representatives as aforesaid, and in no other manner whatsoever." By the act passed at the May session, 1710, of our General Court, entitled "An Act in Addition to, and for Explanation of, the Act for the Settling and Distribution of the Estates of Intestates," it was provided, "that if, after the death of the father, any of his children shall die intestate, without wife or children, in the lifetime of the mother, every brother and sister, and the representatives of them, shall have an equal share with her in the estate of the intestate."

By the terms and plain meaning of either act, the decision of the Judge of Probate and of the Governor and Council was right: but the Province Charter empowered the Governor and General Court to make such laws and statutes, "so as the same be not repugnant or contrary to the laws of this our realm of England," as they should judge to be for the good and welfare of the Province; and, under that clause in the charter, it was contended for the appellant, Gillam Phillips, that it was not within the constitutional power of the Governor and General Court to make an act or law, regulating the descent of real estate in this Province, differing from the law of descents in England.

In 1699, the Colonial Legislature of Connecticut passed an act for the distribution of personal estate, and the descent of real estate of intestates, like our act of 1692.

The Connecticut Charter empowered their General Court to make and establish laws, "not contrary to the laws of this realm of England;" but no provision was therein made that the same should be sent over to be approved or disallowed by the King in Council, as was provided in the Massachusetts Charter.

All the lands of the first Governor Winthrop of Connecticut descended to his son John. John died, leaving the same to his brother, Wait Winthrop: and Wait Winthrop died intestate in 1717, leaving two children only; viz., his son John, and his daughter Anne, the wife of Thomas Lechmere, Esq. Mr. Lechmere made claim to a share of the lands; and notwithstanding Mr. Winthrop protested that the whole lands of his father descended to him from his ancestors, *secundum legem et consuetudinem Angliæ*, Mr. Lechmere was sustained in the Probate Court, and, on an appeal by Mr. Winthrop, again in the Superior Court of Connecticut. Mr. Winthrop appealed to the King in Council; and on the fifteenth day of February, 1728, he there obtained a decree annulling the judgments of both the Probate Court and Superior Court of the Colony of Connecticut, and declaring the Colony law of Connecticut of 1699, entitled "An Act for the Settlement of Intestates' Estates," to be null and void, and of no force or effect whatever, on the ground that said act was contrary to the laws of England, and was *not warranted by the charter of the Colony of Connecticut*. And the authorities of the Colony of Connecticut were notified, at their peril, to yield due obedience to every part of the decree of the King in Council, reversing the judgment of the Probate Court and of the Superior Court of the Colony, on the appeal of Mr. Winthrop therefrom.

On this precedent, Sir Dudley Rider did not fail to rely as a high authority, as will be seen by examining his printed points, &c.

But, by the charter of this Province, it was provided that the acts and laws of the General Court should be sent to England, by the first opportunity after the making thereof, for the royal approbation or disallowance; and, under that provision in the charter, the Provincial Government regularly sent their acts, and regularly received rescripts from the King in Council, declaring the approbation of some acts and laws, and

disapproving, disallowing, and repealing others, and declaring the same void. The King and Council, as evidenced by their rescript in due time had, approved the Massachusetts act of 1692, entitled "An Act for the Settlement and Distribution of the Estates of Intestates." By that confirmation and approbation, the King and Council were committed; and it was held that the Massachusetts statute of descents was valid, and the decision of the Probate Court (and of the Governor and Council on appeal) in dividing the real estate of Henry Phillips were affirmed, notwithstanding the decision in the case from Connecticut.

The laws of Massachusetts and Connecticut, regarding the transmission of real estate by inheritance, were both equally contrary to the laws of England. Why, then, the difference in the two cases, when brought before the King in Council? The laws had been in force many years, and doubtless many titles to real estate vested upon them as the settled laws of the land; and a uniform course of decision would seem to be a matter of course, when the legal provision was the same in both governments.

The whole difference in the two decisions seems to have arisen from the fact, that the Massachusetts Charter required that the enactments should be sent home for approval or rejection, while the Connecticut Charter contained no such provision. Hence, when the Connecticut appeal came before the King in Council, it was an open question, to be decided untrammelled by any ratification or affirmation of the law by them.

The cases argued before and decided by the Privy Council were not reported and published before the forty-ninth year of George III. Since that time, they have been regularly published and printed for the use of the profession of the law.

This printed copy of the arguments, or of the statement of points and authorities, of such eminent lawyers as Sir Dudley Rider and Sir John Strange upon a case appealed from the

courts of this Province to the King in Council in 1734, and argued and determined in 1738, is a great curiosity to a Massachusetts lawyer; and your Committee recommend that the Society refer these papers to the Publishing Committee of the next volume of our Proceedings, as documents in the history of our jurisprudence worthy of preservation and publication by this Society.*

ELLIS AMES, }
JOSEPH WILLARD, } *Committee.*

The report was accepted, and the papers referred to the Publishing Committee.

Mr. R. FROTHINGHAM, Jun., offered a few remarks in relation to an Autobiography of Colonel David Fanning, dated 1790, copied from the original, now in Nova Scotia, by Mr. Porter C. Bliss; which manuscript the President had requested Mr. Frothingham to examine. On motion, the subject of the Autobiography was referred to the Standing Committee, to take such action with reference to its purchase as they might deem advisable.

ANNUAL MEETING, APRIL 11, 1861.

The Society held its annual meeting this day, Thursday, April 11, at twelve o'clock, noon; the President, Hon. ROBERT C. WINTHROP, in the chair.

In the absence of the Librarian, the Recording Secretary announced donations from the Mercantile-Library Association of San Francisco; the Philadelphia Society

* For these papers, see p. 64 of this volume.